



CITY OF ALBUQUERQUE
OFFICE OF ADMINISTRATIVE HEARINGS
ZONING HEARING EXAMINER
NOTIFICATION OF DECISION

Albert S Islar requests a variance of 10 ft to the required 25 ft front yard setback for Lot 7, Block 7, Volcano Cliffs Unit 2, located at 7911 Kibo DR NW, zoned R-1D [Section 14-16-3-4(M)(3)(a)]

Special Exception No:..... **VA-2019-00291**
Project No: **Project#2019-002817**
Hearing Date: 10-15-19
Closing of Public Record: 10-15-19
Date of Decision: 10-30-19

On the 15th day of October, 2019, property owner Albert S Islar (“Applicant”) appeared before the Zoning Hearing Examiner (“ZHE”) requesting a variance of 10 ft to the required 25 ft front yard setback (“Application”) upon the real property located at 7911 Kibo DR NW (“Subject Property”). Below are the ZHE’s findings of fact and decision:

FINDINGS:

1. Applicant is requesting a variance of 10 feet to the required 25 feet rear yard setback.
2. The City of Albuquerque Integrated Development Ordinance, Section 14-16-6-6(N)(3)(a) (Variance-Review and Decision Criteria) reads: “... an application for a Variance-ZHE shall be approved if it meets all of the following criteria:
 - (1) *There are special circumstances applicable to the subject property that are not self-imposed and that do not apply generally to other property in the same zone and vicinity such as size, shape, topography, location, surroundings, or physical characteristics created by natural forces or government action for which no compensation was paid. Such special circumstances of the property either create an extraordinary hardship in the form of a substantial and unjustified limitation on the reasonable use or return on the property, or practical difficulties result from strict compliance with the minimum standards.*
 - (2) *The Variance will not be materially contrary to the public safety, health, or welfare.*
 - (3) *The Variance does not cause significant material adverse impacts on surrounding properties or infrastructure improvements in the vicinity.*
 - (4) *The Variance will not materially undermine the intent and purpose of the IDO or the applicable zone district.*
 - (5) *The Variance approved is the minimum necessary to avoid extraordinary hardship or practical difficulties.*”
3. The Applicant bears the burden of ensuring there is evidence in the record supporting a finding that the above criteria are met under Section 14-16-6-4(N)(1).
4. Albert S. Islar, property owner, appeared and gave evidence in support of the application.
5. The address of the subject property is 7911 Kibo Dr. NW.
6. The subject property is currently zoned R-1D.

7. The subject property is within a Character Protection Overlay Zone, regulated by Section 14-16-3-4(M): ***Volcano Mesa – CPO – 12.***
8. The subject property is within a View Protection Overlay Zone, regulated by Section 14-16-3-6(E): ***Northwest Mesa Escarpment – VPO – 2.***
9. The request is for a variance from Section 14-16-3-4(M)(3): ***CHARACTER PROTECTION OVERLAY ZONES; Volcano Mesa – CPO – 12; Setback Standards; Front, minimum.***
10. The request is a variance from Subsection 3-4(M)(3): ***Setback Standards.***
11. The proposed project is construction of a new single-family residence on the subject lot.
12. The request is for a variance of 10 feet from the 25 foot front yard setback required under setback standards of CPO-12.
13. All property owners within 100 feet of the subject property and the affected neighborhood association were notified.
14. Molten Rock Neighborhood Association and Westside Coalition of Neighborhood Associations are the affected neighborhood associations.
15. A site plan, with detailed drawings, elevations and construction drawing, with accompanying photographs were submitted in support of the Application.
16. Applicant states the variance is necessary to allow Applicant to be able to construct his home, and that the front yard setback was imposed by the IDO, and that other houses in the neighborhood were built with similar setbacks to his request.
17. Applicant states the installation of the exercise swimming pool between the house and the public utility easement, prevents him from moving the house back to the required 25 foot front yard setback.
18. Eric Spurlock, Designer for Applicant, appeared and gave testimony in support of the Application.
19. He submitted an aerial photograph with a drawing of the proposed house and sight lines drawn in red to show view lines available to the adjacent neighbor.
20. Transportation issued a report indicating no opposition to the Application.
21. A report of the meeting between Applicant and Owner and the Molten Rock NA, signed by Mary Ann Wolfe-Lyerla, MRNA President, dated June 2, 2019, indicating opposition to the request was submitted in opposition to the Application.
22. The primary factor for the opposition is equity and fairness for those who already built their homes and observed the setback [*covenants*].
23. The concern that permitting variances opens the door to future, more potentially egregious requests.
24. Eric Jackson, 5612 Cinder Cone Dr. NW, appeared and gave testimony in opposition to the Application.
25. He is a homeowner in the Molten Rock neighborhood.
26. He built his house in 2006, and his house fits the current IDO, which has the same setback regulations as when he built his house.
27. Sandy Levinson, 7901 Kibo Dr. NW, appeared and gave testimony in opposition to the Application.
28. She is the adjacent homeowner, next to Applicant's lot.
29. Granting the variance will put the front of Applicant's house 10 feet in front of her house, which will block her views of the volcanos, valley, mountain views, all very important to this area.
30. Granting the request will ruin front façade uniformity in the surrounding community.

31. She points out Applicant and his agent keep referring to the “new IDO” changing the setback requirements, however the setback requirements have not changed.
32. Those of us that were the first 8 homeowners to build, and those setbacks, front, side and rear, have not been changed by the IDO, and have been the same since the beginning of this development.
33. They and all other homeowners/builders have front setbacks 25 feet from the front property line.
34. Granting the variance will materially, negatively and adversely impact their sight lines/views to the west, including Kibo DR.
35. She stated she did not want to, nor intend to have to go to her back yard for the views.
36. Anyone approaching her house from that direction will not be able to see her house until they are directly in front.
37. The request states that in order for Mr. Islar to fit his house on this lot, with a swimming pool, a 4-car garage, 4 bedrooms, a library, media room, and a large patio, he must reduce the setback by 10 feet.
38. His intention has always been to build this large home, on a lot he purchased that was not big enough for the house he wants.
39. He has created the circumstances which he states requires him to request the variance.
40. His variance would materially undermine the intent and purpose of the View Protection Overlay Zone, which is “to protect and preserve areas with unique and distinctive views that are worthy of conservation”.
41. Will block views to the east and west for other Kibo residents.
42. Applicant bought the subject lot then had his architect design a house too big for that lot.
43. He states he cannot “shrink the plans”.
44. But he could reduce the footprint of the house and could scale the plans slightly and not have to request variance from the established standards.
45. There are also larger lots available in the neighborhood.
46. Agent stated in their meeting with the neighborhood, that he did not know the setback requirements and had obtained the requirements from Google.
47. It appears Applicant designed the house first and then attempted to obtain the variances to make it fit.
48. She states Criteria #1 not met because the difficulties and special circumstances are self-imposed.
49. Criteria # 3 not met, because surrounding properties will be materially, adversely impacted through lower property values.
50. Current setback requirements were put in place to make a subdivision set space between homes front and back to allow for a uniform look that does not have homes sitting on top of each other and blocking each other’s view.
51. She submitted photos showing how her view would be impacted by granting the variance.
52. Her home is 41 feet from the curb, his would be 31 feet from the curb, her home is 25 feet from the property line, his would be 15 feet from the property line.
53. Net result, his home would be 10 feet in front of our home.
54. Established setbacks are valuable to our area.
55. Laurie Weiss, 5609 Popo Dr. NW, appeared and gave testimony in opposition to the Application.

56. She and her husband have lived in the neighborhood for 14 years. And in their area, 5 houses are built, and 3, including them, had to build homes to accommodate elderly disabled relatives.
57. All of the existing homeowners built according to the previous setback requirements, which have not been changed by the IDO.
58. Everyone who purchases property in the development receives a copy of the standards and setbacks required.
59. Everyone who has built has followed those regulations.
60. Primary reason they purchased in Molten Rock is because spacing between homes.
61. Granting the request, will change the character of the neighborhood to the detriment of their property.
62. Harold Gill, 7909 Kibo Dr. NW, appeared and gave testimony in opposition to the Application.
63. They bought their lot 11 years ago, and does not want the view he purchased to be blocked now by allowing Applicant to change the setback requirements.
64. Every homeowner had to build their homes according to the setbacks.
65. They had to give their blueprints to the Architectural Committee for review. They decided what we could build.
66. City took part of his land to build the cul-de-sac, which essentially moved his lot closer to the property line, and Applicant cannot now use relocation to justify blocking his view.
67. Agent admitted to the neighborhood association that he had designed the house before he knew what the required setbacks were.
68. Applicant now wants to reverse the process to design the house he wanted first, and then ask for variances to make it fit the lot.
69. No one in their household is handicapped, presently. We all may become disabled in the future, but it's not right to use that as a reason for the variance.
70. Jill Yeagley, 7936 Victoria Dr. NW, appeared and gave testimony in opposition to the Application.
71. She echoes the same concerns raised by other opponents.
72. Applicant in response stated that they did not request the side yard setback variances and did redesign the building after the meeting with the neighborhood to remove that request.
73. Applicant restated that the adjacent neighbor's view would not be adversely impacted by the variance, and his aerial photograph with drawing, showed that their view would not be obstructed.
74. This proposed project and property was the subject matter of a ZHE hearing in the August 2019 Agenda, on a request for a variance from a required garage setback (**VA-2019-00206**).
75. The variance requested was from Section 14-16-3-4(M)(5)(c): **CHARACTER PROTECTION OVERLAY ZONE: Volcano Mesa CPO-12: Other Development Standards: Residential Garage Access; Table 3-4-1: Allowable Garage Types in Volcano Mesa.**
76. That variance request was granted with modification.
77. The special circumstances raised are self-imposed and therefore Applicant fails to satisfy Section 14-16-6-6(N)(3)(a)(1).
78. There is evidence showing material, adverse impacts on adjacent surrounding properties in the vicinity.
79. The variance will cause significant adverse material impacts on surrounding properties in the vicinity and Applicant fails to satisfy Section 14-16-6-6(N)(3)(a)(3).

80. The request will not protect the quality and character of residential neighborhoods Applicant fails to satisfy Section 14-16-6-6(N)(3)(a)(4).
81. The proper "Notice of Hearing" signage was posted for the required time period as required by Section 14-16-6-4(K)(3).
82. The Applicant has authority to pursue this Application.

CONCLUSIONS OF LAW:

The criteria within Section 14-16-6-6(N)(3)(a) of the Albuquerque Zoning Code are satisfied.

DECISION:

DENIAL of a variance of 10 feet to the required 25 foot front yard setback.

APPEAL:

If you wish to appeal this decision, you must do so by November 14, 2019 pursuant to Section 14-16-6-4(U), of the Integrated Development Ordinance, you must demonstrate that you have legal standing to file an appeal as defined.

Successful applicants are reminded that other regulations of the City must be complied with, even after approval of a special exception is secured. This decision does not constitute approval of plans for a building permit. If your application is approved, bring this decision with you when you apply for any related building permit or occupation tax number. Approval of a conditional use or a variance application is void after one year from date of approval if the rights and privileges are granted, thereby have not been executed or utilized.



Stan Harada, Esq.
Zoning Hearing Examiner

cc: Zoning Enforcement
ZHE File
Albert S. Islar, 6412 Thunderbird Cir NW, 87120
Eric Spurlock, 6100 Seagull ST, 87109
Eric Jackson, 5612 Cinder Cone Dr. NW, 87120
Sandy Levinson, 7901 Kibo Dr. NW, 87120
Laurie Weiss, 5609 Popo Dr. NW, 87120
Harold Gill, 7909 Kibo Dr. NW, 87120
Jill Yeagley, 7936 Victoria Dr. NW, 87120